

Final

**RHODE ISLAND SUPREME COURT
ETHICS ADVISORY PANEL
Opinion No. 97-04, Request No. 706
Issued March 13, 1997**

Facts:

The inquiring attorney conducted a closing of a loan transaction on behalf of a financial institution. Subsequently, an employee of the financial institution's loan department asked the inquiring attorney to represent him/her in an action filed by the financial institution against the employee. The subject of the lawsuit is the employee's employment agreement. The inquiring attorney states that he/she had not closed any other loans on behalf of the financial institution and does not expect to conduct closings for it in the future. The inquiring attorney entered his/her appearance on behalf of the employee because the financial institution is requesting injunctive relief.

Issues Presented:

The inquiring attorney asks whether there is a conflict of interest in representing an employee of the financial institution in a lawsuit relating to the employment agreement.

Opinion:

There is no conflict of interest, and the inquiring attorney may continue to represent the employee in the pending lawsuit.

Reasoning:

This inquiry is governed by Rule 1.9 of the Rules of Professional conduct, which provides:

Rule 1.9. Conflict of Interest: Former Client. - A lawyer who has formerly represented a client in a matter shall not thereafter:

- (a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation;
or
- (b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client or when the information has become generally

known.

The inquiring attorney has no expectation of representing the financial institution at future closings and there is otherwise no on-going attorney-client relationship between them. Based on the facts submitted to the Panel, the Panel is of the opinion that the inquiring attorney may represent the employee in a suit against the financial institution because the subject of the lawsuit is not the same or substantially related to the attorney's prior representation of the financial institution. See R.I Sup. Ct. Ethics Advisory Panel Opinion 92-76 (1992). However, the inquiring attorney may not use information he/she acquired in the representation of the former client to its disadvantage in the lawsuit. See. Rule 1.9(b).